

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

TODD RUFFOLO,

Case No. 18-23837-rdd

Chapter 7

HON. ROBERT D. DRAIN

Debtor.

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NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed application of attorneys for Ocwen Loan Servicing, LLC as servicer for HSBC Bank USA, National Association, as Trustee for the benefit of People's Financial Realty Mortgage Securities Trust, Series 2006-1, Mortgage Pass-Through Certificates, Series 2006-1, (hereinafter "Movant"), the undersigned respectfully moves this Court for an order, pursuant to 11 U.S.C. § 362(j) and 11 U.S.C. § 362(c)(4), confirming that no automatic stay is in effect herein as to the lien interest of Movant in real property of the debtor commonly known as 9 Pleasant Avenue, White Plains, New York 10605, together with Movant attorney's fees and costs as set forth in the Motion and such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that this motion shall be returnable on the 22nd day of March, 2019 at 10:00 a.m. of that day, or as soon thereafter as counsel can be heard, before the Hon. Robert D. Drain at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601.

PURSUANT TO BANKRUPTCY RULE 9014 AND LOCAL BANKRUPTCY RULE

**9006-1(b), IF YOU INTEND TO OPPOSE THE MOTION, YOU MUST SERVE ON
MOVANT'S COUNSEL AND FILE WITH THE CLERK OF THE BANKRUPTCY
COURT, WRITTEN OPPOSITION TO THE MOTION SO AS TO ENSURE ACTUAL
RECEIPT NOT LATER THAN SEVEN (7) DAYS BEFORE THE RETURN DATE.**

Dated: December 19, 2018
Westbury, NY

RAS BORISKIN, LLC
Attorney for Secured Creditor
900 Merchants Concourse, Suite 310
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Phone: (516) 280-7675
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By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
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TO:

Pro Se Debtor

Todd Ruffolo
Post Office Box 1696
White Plains, NY 10602

Trustee

Mark S. Tulis
Tulis Wilkes Huff & Geiger LLP
220 White Plains Road
2nd Floor
Tarrytown, NY 10591

U.S. Trustee

United States Trustee
Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

Chamber's Copy

Hon. Robert D. Drain
US Bankruptcy Court- SDNY
300 Quarropas Street
White Plains, NY 10601

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**MOTION REQUESTING CONFIRMATION NO AUTOMATIC STAY IS IN EFFECT
PURSUANT TO 11 U.S.C. §362 (j)**

**TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE**

Secured Creditor, Ocwen Loan Servicing, LLC as servicer for HSBC Bank USA, National Association, as Trustee for the benefit of People's Financial Realty Mortgage Securities Trust, Series 2006-1, Mortgage Pass-Through Certificates, Series 2006-1, by and through the undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. § 362(j) and 11 U.S.C. § 362(c)(4) to confirm the automatic stay has been terminated, and, in support thereof, states the following:

1. Debtor, Todd Ruffolo, filed a voluntary petition pursuant to Chapter 7 of the United States Bankruptcy Code on November 30, 2018.
2. Jurisdiction for this matter is granted to the Bankruptcy Court pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 362, Fed. R. Bankr. P. 4001(a), and all other applicable rules and statutes affecting the jurisdiction of the Bankruptcy Courts generally.
3. On June 21, 2006, Debtor, Todd Ruffolo (a/k/a Todd Ruffalo) executed and delivered a Promissory Note ("Note") and a Mortgage ("Mortgage") securing payment of the Note in the

amount of \$518,400.00 to People's Choice Home Loans, Inc. The mortgage was held by Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans, Inc. The Mortgage was recorded on August 23, 2006 in Instrument Number 462220567 of the Public Records of Westchester County, New York. The Mortgage was assigned to Secured Creditor. True and accurate copies of documents establishing a perfected security interest and ability to enforce the terms of the Note are attached hereto as Composite Exhibit "A." The documents include copies of the Note with any required indorsements, Recorded Mortgage, Assignment(s) of Mortgage, and any other applicable documentation supporting the right to seek a lift of the automatic stay and foreclose, if necessary.

4. Ocwen Loan Servicing, LLC services the underlying mortgage loan and note for the property referenced in this Motion for HSBC Bank USA, National Association, as Trustee for the benefit of People's Financial Realty Mortgage Securities Trust, Series 2006-1, Mortgage Pass-Through Certificates, Series 2006-1 (hereinafter, "noteholder") and is entitled to proceed accordingly. Should the Court hold that the Automatic Stay is not effective in this case or lifts and/or sets aside by Order or if this case is dismissed or if the Debtor obtains a discharge and a foreclosure action is commenced or recommenced, said foreclosure action will be conducted in the name of the HSBC Bank USA, National Association, as Trustee for the benefit of People's Financial Realty Mortgage Securities Trust, Series 2006-1, Mortgage Pass-Through Certificates, Series 2006-1. The noteholder has the right to foreclose because noteholder is the original mortgagee or beneficiary or assignee of the security instrument for the referenced loan. Noteholder directly or through an agent has possession of the promissory note and the promissory note is either made payable to noteholder or has been duly endorsed.

5. The mortgage provides Secured Creditor a lien on the real property located at 9 Pleasant

Avenue, White Plains, New York 10605 (the "Property") in Westchester County, New York, and legally described as stated in the mortgage attached in Composite Exhibit "A."

5. The terms of the aforementioned Note and Mortgage have been in default, and remain in default since August 1, 2008, in the amount of \$560,129.98, as of December 10, 2018.

6. Secured Creditor obtained a judgment of foreclosure against the Debtor in an action in the Supreme Court of the State of New York, Index No. 5071/2009, due to the default under the terms of the Note and Mortgage securing Secured Creditor's interest in certain real property legally described as:

ALL THAT CERTAIN PLOT PIECE ORPARCEL OF 1AND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE CITY OF WHITE PLAINS COUNTY OF WESTCHESTER AND STATE OF NEW YORK, DESIGNATED AS LOTS 77 AND 78 ON A CERTAIN MAP ENTITLED, "SUBDIVISION MAP OF GEDNEY PARK, IN THE CITY OF WHITE PLAINS, WESTCHESTER COUNTY, NEW YORK", MADE BY WADE CARPENTER & CO. INC., MAY 21, 1923 AND FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE (FORMERLY REGISTER'S OFFICE, DIVISION OF LAND RECORDS, ON JUNE 19, 1923, AS MAP NO. 2504, BEING BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF PLEASANT AVENUE DISTANT 100.00 FEET NORTHEASTERLY FROM THE INTERSECTION FORMED BY THE NORTHEASTERLY SIDE OF GEDNEY WAY WITH THE SOUTHWESTERLY SIDE OF PLEASANT AVENUE, SAID POINT ALSO BEING WHERE THE DIVISION LINE BETWEEN LOTS 77 AND 72 INTERSECT WITH THE SOUTHWESTERLY SIDE OF PLEASANT AVENUE;

RUNNING THENCE ALONG THE DIVISION LINE BETWEEN LOT 77 AND LOTS 72, 71 AND PART OF LOT 100 ON SAID MAP, NORTH 79° 58' 00" WEST 62.11 FEET TO LOT 66;

RUNNING THENCE ALONG THE DIVISION LINE BETWEEN LOTS 77 AND 78 AND LOTS 66, 65 AND PART OF LOT 64 ON SAID MAP, NORTH 02., 39' 30" EAST 71.28 FEET TO LOT 79;

RUNNING THENCE ALONG THE DIVISION LINE BETWEEN LOT 78 AND LOT 79 ON SAID MAP, SOUTH 78° 39' 00" EAST 92.27 FEET TO THE NORTHWESTERLY SIDE OF PLEASANT AVENUE;

RUNNING THENCE ALONG THE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY SIDE OF PLEASANT AVENUE; SOUTH 29°15' 40" WEST 63.66 FEET TO A POINT AND SOUTH 10° 02' 00" WEST 8.47 FEET TO THE POINT AND PLACE OF BEGINNING.

The Property is located at the street address of: 9 Pleasant Avenue, White Plains, New York, 10605.

7. On October 2, 2017, Debtor filed a petition for relief under Case Number 17-23530. This case was dismissed on March 6, 2018 pursuant to 11 U.S.C. §707(a).

8. On May 21, 2018, Debtor filed a petition for relief under Case Number 18-22763. This case was dismissed on November 6, 2018 pursuant to 11 U.S.C. 11 U.S.C. §707(a).

9. This current case is the Debtor's third bankruptcy filing since 2017 and the third one to be pending within the year prior to its filing date. Based on the foregoing, it is Secured Creditor's position that the automatic stay did not go into effect upon the commencement of this case. Therefore, Secured Creditor is entitled to relief under 11 U.S.C. § 362(c)(4) and (j).

10. It is Secured Creditor's belief that the Debtor has filed this bankruptcy in bad faith in a further attempt to delay the inevitable foreclosure sale of the Property, just as Debtor used the two previous filed cases in this Court.

11. Secured Creditor has incurred court costs and attorney's fees in this proceeding and will incur additional fees, costs and expenses in foreclosing the Mortgage and in preserving and protecting the Property, all of which additional sums are secured by the lien of the mortgage. Secured Creditor seeks an award of its reasonable attorneys' fees and costs, or alternatively, leave to seek recovery of its reasonable attorneys' fees and costs in any pending or subsequent foreclosure proceeding.

WHEREFORE, Secured Creditor, prays this Honorable Court enter an order confirming

that the automatic stay is not in effect in this case pursuant to 11 U.S.C. §§ 362(c)(4) and 362(j) and which will permit Secured Creditor to take any and all steps necessary to exercise any and all rights it may have in the Property, to enforce its rights against and gain possession of said collateral, to seek recovery of its reasonable attorneys' fees and costs incurred in this proceeding, and for any such further relief as this Honorable Court deems just and appropriate.

Dated: December 19, 2018
Westbury, NY

RAS BORISKIN, LLC
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